



We the People
THE CITIZEN AND THE CONSTITUTION

Directed by the Center for Civic Education and funded by the U.S. Department of Education under the Education for Democracy Act approved by the United States Congress.

STATE HEARING QUESTIONS 2014–2015

Unit One: What Are the Philosophical and Historical Foundations of the American Political System?

- 1. The Virginia Declaration of Rights was the first written enumeration of the rights of citizens and the fundamental principles of government in the newly independent United States. What ideas drawn from the natural rights philosophy were incorporated into the Virginia Declaration of Rights?**
 - What ideas drawn from classical republicanism are included in the Virginia Declaration of Rights?
 - What rights that Americans enjoy today under both their state and national bills of rights were included in the Virginia Declaration of Rights?

- 2. Compare and contrast the essential political ideas of classical republicanism and natural rights philosophy.**
 - What values from natural rights philosophy had the most influence on the founding generation? Why?
 - What values from classical republicanism continue to have widespread appeal today? Why?

- 3. What were the most important differences between the basic ideas of feudalism and the basic ideas that developed out of the Renaissance and the Reformation?**
 - In what ways, if any, did new ideas born of the Renaissance and the Reformation give rise to what James Madison called “the new science of politics”?
 - In what ways did natural rights philosophers and Protestant religions contribute to the rise of capitalism?



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Unit Two: How Did the Framers Create the Constitution?

1. **“The Constitution was ordained and established not by the States in their sovereign capacities, but emphatically, as the Preamble of the Constitution declares, by the people of the United States.”*** In what ways, if any, did that mark an important departure from the establishment of the Articles of Confederation?

- In what ways is the United States Constitution different from legislative codes, and why are those differences important?
- What is the significance of using the words “We the People” in the Preamble?

* *McCulloch v. Maryland*, 17 U.S. 316 (1819)

2. **“The creation of the Northwest Territory out of the western lands was one of the few successful exercises of power during the years in which the Articles of Confederation were in place.”*** Do you agree or disagree with this assertion? Why? What evidence can you offer to support your position?

- What do you consider to be the most important principles set forth in the Northwest Ordinance? Why?
- What do you consider to be the most important failures of the Articles of Confederation? Why?

*G. Edward White. *Law in American History. Vol. 1.* New York: Oxford University Press, 2012, p172.

3. **“No society, certainly not a large and heterogeneous one, can fail in time to explode if it is deprived of the art of compromise, if it knows no ways of muddling through. No good society can be unprincipled; and no viable society can be principle-ridden.”*** Do you agree or disagree with this opinion? Why? What evidence can you offer to support your response?

- What compromises were made at the Constitutional Convention of 1787? At what costs? For what benefits?
- How would you distinguish between someone who is “unprincipled” and someone who is “principle-ridden”? What is the significance of those differences?

*Alexander M. Bickel, *The Least Dangerous Branch*, 64, 1962. Quoted in *American Legal Quotations*. Fred R. Shapiro, ed. 1993. New York: Oxford University Press, 180.



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Unit Three: How Has the Constitution Been Changed to Further the Ideals Contained in the Declaration of Independence?

- 1. “America’s first eleven amendments had all aimed to limit the federal government and the Twelfth had neither added nor detracted from federal authority. By contrast the Thirteenth expanded the federal government’s role in broad language.”* Do you agree or disagree with this scholar’s assertion? What evidence can you offer to support your position?**
 - Why and in what ways has Section 2 of the Thirteenth Amendment proved to be especially significant?
 - In what ways, if any, did the Thirteenth Amendment extend to limits on private, as well as public actions.
- 2. What are the basic differences between the adversary system of justice used in the United States and the inquisitorial system used in most European nations?**
 - The theory of the adversary system is that through observing the presentation of evidence and agreement favorable to each party, the truth will become apparent to the jury or judge making the decision. How well has that theory been substantiated in practice? What evidence can you offer to support your response?
 - What procedural safeguards in the Fifth and the Fourteenth Amendments ensure a fair trial for defendants in the adversarial legal system?
- 3. In *Federalist 51*, James Madison claimed that “The government must be structured and designed so that the three constitutional branches and their relationships will have the ability to keep each other in their proper places.”* What is judicial review and how does it try to keep the other branches in “their proper places”?**
 - In writing *Marbury v. Madison* (1803), what were the major arguments Chief Justice Marshall gave to justify judicial review?
 - Why has judicial review remained controversial to the present day?

* Akhil Reid Amar. *America’s Constitution: A Biography*. New York: Random House, 2005, 361.

**Federalist 51* in *The Federalist Papers in Modern Language*. Mary E. Webster, ed. Bellevue, Washington, 1999. Merrill Press, 210.



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Unit Four: How Have the Values and Principles Embodied in the Constitution Shaped American Institutions and Practices?

1. Article One Section 8 has been called “one of the most important sections of the Constitution.”* Do you agree or disagree? Why?

- What historical experiences led to the length and the specificity of Article One Section 8?
- How would you explain “the necessary and proper clause” included in Article I Section 8? Why do you think it was added to the other more specific powers granted to Congress?

*Edward S. Corwin. *The Constitution and What It Means Today*. Revised by Harold W. Chase and Craig R. Ducat. 1978, Princeton, New Jersey; Princeton University Press, 38.

2. Since the presidency of Franklin Roosevelt there has been an increasing use by presidents of executive orders and signing statements to establish national policy. To what extent, if any, does this practice violate the principle of separation of powers contained within the Constitution?

- What are the advantages and disadvantages of the use of executive orders and signing statements?
- Should the president be able to refuse to carry out a law he/she believes to be unconstitutional? Why or why not?

3. The United States Supreme Court has been called “a Constitution–guarding court”* as well as a court of “last resort”. Do you agree or disagree with this assessment of the role of the Supreme Court?**

- What checks exist on the power of the Supreme Court? What examples can you provide of how those checks have been used?
- Should there be term limits on Supreme Court justices? Why or why not?

*Leslie Friedman Goldstein. “Constitutionalism as Judicial Review: Historical Lessons from the U.S. Case”, in *The Supreme Court and the Idea of Constitutionalism*. Steve Katz *et. al.*, eds. 2009 Philadelphia: University of Pennsylvania Press.

** *Federalist* 22:14.



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Unit Five: What Rights Does the Bill of Rights Protect?

1. The rights declared in the Fourth Amendment “are not mere second class rights but belong in the catalogue of indispensable freedoms.”* Do you agree or disagree? What evidence can you offer to support your response?

- What historical experiences led to the adoption of the Fourth Amendment?
- Unrestricted search and seizure has been called “one of the first and most effective weapons in the arsenal of every arbitrary government.”** Do you agree or disagree? What evidence can you offer to support your response?

*Robert H. Jackson. *Brinegar v U.S.*, 338 US 160, 180-81 (1999) (dissenting).

** Robert H. Jackson. *Brinegar v U.S.*, 338 US 160, 180-81 (1999) (dissenting).

2. “The court has struggled to find a neutral course between the two Religion Clauses, both of which are cast in absolute terms and either of which, if expanded to a logical extreme, would tend to clash with the other.”* Why has the Court continued to struggle to find a neutral course? What basic values and principles have been in contention?

- Why might the two clauses, if expanded, clash with one another?
- What criteria should be used to determine what religious practices should be protected and which practices government may limit?

**Walz v Tax Commissioner*, 397, 664, 669 (1970)

3. “The jury summed up—indeed embodied—the ideals of federalism, populism and civic virtue that were the essence of the original Bill of Rights.”* Do you agree or disagree with this opinion? What evidence can you offer in support of your response?

- What purposes are served by the right to be tried by a jury of your peers?
- Evaluate the Anti-Federalists’ claim that “judges unencumbered (unrestrained) by juries have been, ever found much better friends to government than to the people.”

*Akhil Amar and Les Adams, *The Bill of Rights Primer*. New York: Skyhorse Publishing. 2013, 134



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Unit Six: What Challenges Might Face American Constitutional Democracy in the Twenty-first Century?

1. “Judicial Review relies on a ‘fire-alarm’ model using the complaints of damaged parties to trigger scrutiny of government policy.”* How would you describe the “fire-alarm” model of challenging government policies? What are its advantages and disadvantages?

- Why and how did African-Americans and other groups use the “fire-alarm” model to call attention to their grievances?
- In addition to court challenges, in what other ways have “damaged parties” tried to change government policies? With what success?

*Keith E. Whittington. “Constitutional Constraints in Politics”. *The Supreme Court and the Idea of Constitutionalism*. Steven Katz et. al, eds. 2009. Philadelphia: University of Pennsylvania Press. 227.

2. “Four decades of high volume immigration from virtually every country, rising intermarriage and persisting fertility differentials have transformed the United States into the most demographically complex society in the world.”* On balance, does increasing the diversity enrich the nation’s economic and culture or are there limits to how much diversity the country can absorb?

- Why has immigration reform become what some scholars call a “political minefield”?
- Evaluate the argument that because the federal government has failed to regulate immigration, that power should be given to the states.

*Maria Tienda. “Demography and the Social Contract” in *Princeton Readings in American Politics*. Richard M. Vallely, ed. Princeton: Princeton University Press, 2009. 409.

3. “American rights and American freedom were not a gift of the country’s ‘founding fathers.’ They are and have always been a work in progress.”* Do you agree or disagree with this statement? Why? What evidence can you offer to support your response?

- What has been the role of Congress and state legislatures in the establishment and expansion of individual rights?
- What do you think are the major challenges to the rights of Americans today and what should be done to address those challenges?

*Pauline Maier. *Ratification: The People Debate the Constitution*. 1787-1788. (New York: Simon and Schuster, 2010), 467.